

Interlocutory Orders, Etc.

IN THE MATTER OF

**WHOLE FOODS MARKET, INC.,
AND
WILD OATS MARKETS, INC.**

Docket No. 9324 Order, October 20, 2008

Order appointing an Administrative Law Judge for the remainder of the adjudicative proceeding.

ORDER DESIGNATING ADMINISTRATIVE LAW JUDGE

The Federal Trade Commission (“FTC”) issued an administrative complaint on June 27, 2007, alleging that Whole Foods Market, Inc.’s agreement to acquire Wild Oats Markets, Inc. violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that such an acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act. The Commission retained jurisdiction over the matter pursuant to its authority under the Administrative Procedure Act (APA)¹ and the Commission Rules of Practice.² On August 7, 2007 the Commission issued an Order staying the administrative

¹ Section 556(b)(2) of the APA permits the Commission to determine whether the Commission itself, one or more Commissioners, or an administrative law judge appointed under 5 U.S.C. § 3105 of the APA will “preside at the taking of evidence” in adjudications conducted under Section 554 of the APA -- such as this adjudicative proceeding -- and to carry out all the functions permitted by Section 556(c) of the APA and Part 3 of the Commission Rules of Practice. *See* 5 U.S.C. § 556.

² Part 3 of the Commission Rules of Practice governs the procedures used in Commission adjudicative proceedings. *See* 16 C.F.R. § 3.1 *et seq.* (2008). Commission Rule 3.42 gives the Commission full discretion to determine whether it should preside over a particular adjudicative proceeding itself; designate one or more Members of the Commission to preside over the proceeding; or refer the proceeding to an administrative law judge. *See* 16 C.F.R. § 3.42.

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proceeding pending the proceedings in the collateral federal district court case. On August 8, 2008, the Commission issued an Order rescinding the stay of the administrative proceeding, setting a Scheduling Conference, and designating Commissioner J. Thomas Rosch as the Presiding Official for the Scheduling Conference. On September 8, 2008, the Commission issued an Order Amending Complaint and an Amended Complaint. Commissioner Rosch held the Scheduling Conference on that same day, and on September 10, 2008, the Commission issued a Scheduling Order imposing a fair and timely schedule in this matter. That Order provides, *inter alia*, that the administrative hearing shall begin on February 16, 2009.

The Commission has now determined to designate Acting Chief Administrative Law Judge D. Michael Chappell as the Administrative Law Judge in this matter. Chairman William E. Kovacic and Commissioners Pamela Jones Harbour, Jon Leibowitz, and J. Thomas Rosch are committed, subject to the bounds of reasonableness and fairness, to a just and expeditious resolution of any potential appeal from an Initial Decision filed by the Administrative Law Judge in this matter that may be taken to the full Commission. If such an appeal is filed, the Commissioners commit to make every effort to issue a Commission Opinion and Final Order within approximately 45 days after oral argument.

Accordingly,

IT IS ORDERED THAT Acting Chief Administrative Law Judge D. Michael Chappell be, and he hereby is, designated and appointed to serve as the Administrative Law Judge presiding over the adjudicative proceeding in this matter; and

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IT IS FURTHER ORDERED THAT the Commission hereby transfers adjudicative responsibility for this matter to Judge Chappell, in his capacity as Administrative Law Judge presiding over the adjudicative proceeding in this matter.

By the Commission.

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IN THE MATTER OF

AGRIUM, INC.
AND
UAP HOLDING CORPORATION

Docket No. C-4219 October 28, 2008

Letter responding to Agrium's petition for approval of a proposed divestiture pursuant to Section 2.41(f) of the Commission's Rules of Practice and Procedure.

LETTER APPROVING DIVESTITURE

Dear Ms. Feinstein:

This is in reference to the Petition of Agrium, Inc. For Approval of Proposed Divestiture to Helena Chemical Company ("Helena"), filed by Agrium, Inc. ("Agrium") and received on August 18, 2008 ("Petition"). Pursuant to the Decision and Order in Docket No. C-4219, Agrium requests prior Commission approval of its proposal to divest certain assets to Helena.

After consideration of Agrium's Petition and other available information, the Commission has determined to approve the proposed divestitures as set forth in the Petition. In according its approval, the Commission has relied upon the information submitted and the representations made by Agrium and Helena in connection with Agrium's Petition and has assumed them to be accurate and complete.

By direction of the Commission.